IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE R.S.O. 1970, CHAPTER 318, AS AMENDED

AND IN THE MATTER OF the complaint made by Mrs. Heather Hawkes of Marmora, Ontario, alleging discrimination in employment because of sex and age by Brown's Ornamental Iron Works of Belleville Limited, 99 College Street West, Belleville, Ontario.

Board of Inquiry

D.A. Soberman

Appearances:

Mr. S.L. Goldenberg	- Counsel for the Ontario Human Rights Commission and the Complainant, Mrs. Heather Hawkes
Mrs. Vivienne Brown and Mr. Wesley Brown	- for themselves, and Brown's Ornamental Iron Works of Belleville Limited

This enquiry is concerned with the complaint of Mrs. Heather Hawkes against Brown's Ornamental Iron Works of Belleville Ltd. and Vivienne and Wesley Brown, sole beneficial owners of the company, alleging that they discriminated against her in violation of section 4, subsection 1(a), (b) and (c) of the Ontario Human Rights Code, R.S.O. 1970, c. 318 as amended, by refusing to employ or to continue to employ or train Mrs. Hawkes because of her age. The complaint originally alleged discrimination based also on sex but at the beginning of the hearing this allegation was dropped by the complainant.

THE FACTS

At the time of the alleged violation Mrs. Hawkes was 51 years old. She had arrived in Canada from England in 1954, and from that time until June 1973 she was employed in various jobs of a secretarial or clerical nature in the Toronto area. In June 1973, Mrs. Hawkes was laid off her job in Toronto and decided to move to the Belleville area where she had recently bought a property. From July 1973 until August 1974 she made efforts to find work in the Belleville area without success. At first she tried to obtain office work, but when those efforts were unsuccessful she looked for factory work or other work involving manual labour. Again she had no success mainly, she believes, because she lacked training or experience. In August 1974, after her unemployment insurance coverage had run out, she was accepted for retraining under a program of the Department of Manpower and Immigration. The program was run at Loyalist College of Applied Arts and Technology in Belleville. The first year of the program,

from August 1974 to June 1975, consisted mainly in "upgrading" in more traditional schoolwork including English, mathematics and history. In June 1975, Mrs. Hawkes began an industrial training program in maintenance mechanics. She completed that program April 30, 1976, and received a certificate from the college. Once more she began searching for a job but without success until the morning of August 24, 1976, when the events, out of which the complaint arises, began.

Brown's Ornamental Iron Works is a family business started by Mr. Wesley Brown in the early 1960's and incorporated in 1970. Except for one qualifying share, as required under the Ontario Corporations Act at the time, all shares are owned by Mr. Brown and his wife Mrs. Vivienne Brown who works with him in the business. A major, or the major, activity of the business is the manufacture or iron railings for staircases and balconies. A number of employees of the company are engaged in making these railings. When an employee receives the specifications for a particular job, he obtains the appropriate steel rods from stock, cuts them to the required sizes and welds them together. It appears that the cutting operation is done by machine and does not require much skill: the employee must lift and maneuver the sometimes heavy, long pieces of rod into place for cutting and this may require considerable physical effort. The most important and skilled task is welding the pieces together. Although detailed evidence was not presented on this matter, I believe that welding is considered a skilled trade and welders are certified by an organization referred to by Mr. Brown as the Canadian Welding Bureau. Aside from productivity, the

main concern in welding is that welded joints be strong and acceptably neat-looking to customers. Training, either through an industrial schooling program or on-the-job is necessary, and eventually (it was not made clear at what time) a welder must pass tests demonstrating the quality of welded joints.

Some days before August 24, 1976, the Browns decided that they needed to hire another welder. Accordingly, Mrs. Brown telephoned the Department of Manpower office, spoke with Mr. Michael Collins, a Manpower Counsellor, and asked him to send along some applicants. Although neither Mr. Collins nor Mrs. Brown could recall the exact date of the conversation or the actual words, both are agreed on the substance of the conversation as follows:

1) that the employer was interested in hiring either a woman or a man;
2) there was even some special interest in seeing whether a woman would be suitable for the work since the Browns had never employed a woman in the job before;
3) the particular job the Browns had in mind was for relatively light work, or at least, not the heaviest or hardest work in the business;
4) the employer was looking for someone with some welding background, that is, not a complete novice, and would be willing to give additional on-the-job training, although the level of competence expected and amount of training it was willing to give is unclear.

On the morning of August 24, 1976, Mrs. Hawkes received a telephone call from Mr. Collins about the possible job at Brown's. He said that a woman would be considered for the job and that on-the-job training would be available. It was arranged that Mrs. Hawkes go to Brown's for an 11:30 a.m. interview. She arrived at Brown's at the appointed time and was met by Mrs. Brown. From this time forward the events are in dispute.

As is frequently the case in such matters, much turns on the details of conversations and occurrences at one or two meetings between parties to a complaint, meetings at which no one else was present. When tnere is a conflict of testimony on crucial questions of fact, much turns on the plausibility of each side's story, the coherence of the witnesses and the consistency of prior and subsequent conduct with respect to the events in dispute. In the present complaint the respondents chose to dismiss their counsel some time before the hearing. Mr. and Mrs. Brown appeared in person and on behalf of the company to argue their own case. The respondents, firmly convinced that they had done nothing improper, did not understand the importance of telling their story carefully and coherently. Neither did they understand the purpose or benefit to themselves of cross-examining the complainant and complainant's witnesses. Although I made a number of attempts to explain the significance of these things and to encourage the Browns to both cross-examine and tell their story fully, I could not persuade them to do so.

In these circumstances, I found it my task to intervene in questioning, more than is probably usual, to help elicit the respondents' story, but with only limited success. On the other

hand, the complainant gave a careful and coherent account of the events. Generally speaking, I have adopted the story as told by the complainant and have noted those places where the respondents have disagreed.

Mrs. Hawkes described her first meeting at the Browns' place of business as follows: Mrs. Brown asked her questions about her experience. Mrs. Hawkes informed her that welding had been only a minor aspect of her industrial maintenance course and that she had done some oxy-acetylene welding and just a little bit of arc welding. Mrs. Brown did not seem very concerned about the experience side, but did ask Mrs. Hawkes her age and expressed some concern about whether the work might be too heavy. Mrs. Brown then showed Mrs. Hawkes around the shop, all the while carrying on a conversation about the difficulty of getting suitable people who would stay with the firm. When they returned to the office Mr. Brown came in and was told by his wife that she was thinking of hiring Mrs. Hawkes. He asked much the same questions that his wife had asked and his wife undertook to answer most of the questions herself.

Mrs. Hawkes did not receive an explicit offer of a job, but the parties did begin to discuss wages and working conditions. According to Mrs. Hawkes, the Browns offered her $4.00 an hour to start, with the suggestion that she should begin working in about three weeks, when another employee was to be married and leave for his honeymoon. Apparently this employee was to be assigned other work on his return. (Mrs. Brown stated that she quoted a starting wage of $4.25 an hour). Mrs. Hawkes inferred from this discussion that she was being offered a job, and that she accepted.

According to Mrs. Hawkes, there was no discussion at this time of her taking a welding test or of the job being conditional upon her passing a welding test.

Mrs. Hawkes went to the Manpower office after leaving the Browns' premises and discussed the job with her counsellor. She wondered whether she should return to Loyalist College in the three week interval to get some practice in welding and he agreed that it would be a good idea. She then made arrangements at Loyalist, and returned to the Browns in the afternoon to tell them what she intended to do. Mrs. Hawkes stated that Mrs. Brown said to her, "Well, we've talked it over during lunch time, and we've decided to hire you. We will take you on." The parties then discussed the actual starting date and consulted a calendar. It was agreed that Mrs. Hawkes would report for work the morning of Monday September 13th. Whether Mrs. Hawkes' belief that she already had a job that morning was accurate or not, according to her an explicit offer was made during the return visit and she accepted it.

During the week of August 30 to September 3, and also the following week, Mrs. Hawkes spent time at Loyalist College practising her welding. She also purchased a pair of safety boots and some work shirts, and on September 9th she purchased a welding helmet of her own. Although the Browns had said they would provide a helmet Mrs. Hawkes preferred to buy her own because she is quite far sighted and needs a magnifiying lens in the viewing screen of the helmet. Mrs. Hawkes spent $75 on these items.

The Browns deny that they offered Mrs. Hawkes a job and say that they only offered her the opportunity to take a test to see whether she was good enough, that is, to see whether she had the minimal competence needed as a precondition for on-the-job training. Aside from the parties' own testimony there is only one piece of evidence by a third party that bears directly on the issue of whether a job was actually offered to Mrs. Hawkes.

Mr. Michael Collins, the counsellor with the Department of Manpower who had received the request from Brown's for a suitable person for a welding job, stated that he had referred four people to Brown's including Mrs. Hawkes. We have no information on the other three persons. In his testimony Mr. Collins stated tnat, "several days later in the normal process of my work...I phoned back [to Brown's] to see where we stood...and she [Mrs. Brown] gave me to understand at that time on the phone that she was going to hire Mrs. Hawkes." Unfortunately Mr. Collins did not bring his written records with him to the hearing. In discussion of the type of record card kept on file in his office he stated, "The order form on the back has a space for columns of different items...whether the person was hired, rejected, failed to accept, something of this sort, and we merely put a tick in the proper column, and that's what happened."

Counsel for the Complainant and the Commission at that point said, "So you would have ticked the column." Mr. Collins replied, "I would have ticked the column that said that Mrs. Hawkes was hired." In other words, it was Mr. Collins' clear impression from his telephone conversation with Mrs. Brown that Mrs. Hawkes had

been hired, and thus his testimony on this point corroborates the testimony of Mrs. Hawkes.

Mrs. Hawkes believed then, that she was to start work Monday, September 13, 1977, and realizing that the time she should arrive for work had been left rather vague, she visited Brown's late Thursday afternoon, September 9, to inquire about the starting time. When she arrived a "snack truck" was parked outside the building and a crowd of people including Mr. and Mrs. Brown were clustered around the vehicle. Mrs. Hawkes parked her car and started toward the truck with the thought of buying a soft drink. Mrs. Brown had already seen Mrs. Hawkes arrive and approached her with a drink, saying, "I've got one for you".

Once inside the office Mrs. Brown immediately said, "We've been thinking this over, and we think the work is going to be too heavy for you." Mrs. Hawkes tried to persuade Mrs. Brown that she could do the work, but Mrs. Brown mentioned that she had talked the subject over with her sister-in-law and had come to the conclusion, as a result of that discussion, that because Mrs. Hawkes had worked in an office all her life, especially at her age, it would be too hard.

At this point Mr. Brown came into the office and agreed with Mrs. Brown that the work would be too heavy. According to Mrs. Hawkes, Mr. Brown stated that the work requirements for the job had changed and were expected to be much heavier than had been earlier intended. Mrs. Hawkes stated she was still protesting that she was capable of handling the work, when, "Mr. Brown suddenly said, 'Well, do you want to come and try some--try some work?'

So I said, 'Well, yes,' so I followed him out to the shop and we went to a work bench--first of all, I went out to my car to get my own helmet, and he seemed a little surprised at that..."

Mrs. Brown, in her evidence, denied Mrs. Hawkes' version of the events but did not give any other version despite questioning by me about exactly what happened. She first stated that at their earlier interview in August, "She [Mrs. Hawkes] told my husband she was coming back to try the test...She just came in one day and said, 'I'm going to try the test,' so he gave her the test, and then he didn't hire her." Later Mrs. Brown said, "I met her in the office. I asked her her age and everything, and, but I never mentioned anything, I said, 'The work is awful heavy,' and the work is heavy..." In reply to a further question about whether Mrs. Hawkes was told she could have the job if she passed the test, Mrs. Brown replied, "Yes, I told her that, but I think she was still deliberately mad because she didn't get the job." Mrs. Brown appeared here to confuse what happened before and after the test, because she later talked at length about how upset Mrs. Hawkes was when she failed to pass the test.

Mr. Brown's evidence does not shed any light on the conversation between Mrs. Hawkes and his wife before he entered the office. He stated only "The next time she came in, she talked to Vivienne and I for a few minutes and I said, 'We'll try a test and see how you make out on the machine.'". Later, in response to a question about this conversation, Mr. Brown stated, "There wasn't too much conversation at all. She said she spent a couple of weeks at Loyalist practising up..."

Mr. Brown then took Mrs. Hawkes to the shop and set up a series of welding tests for her. The tests took about three quarters of an hour, with Mr. Brown returning to the location where Mrs. Hawkes was working from time to time to inspect her work. Tne evidence of the parties is in substantial agreement about the procedure, but it is in conflict about the comments made by Mr. Brown as each type of weld proceeded. If Mrs. Hawkes' version of the earlier conversation in the office is accepted, she was very likely upset and nervous by the time she tried the tests. It also seemed that Mrs. Hawkes was not very skilled in welding. To put the best interpretation on it from the point of view of the Browns, I conclude that the welded joints were of poor quality, but in order to treat Mrs. Hawkes gently they made encouraging rather than critical remarks during the test.

Much time was devoted at the hearing to the nature of the tests and their results. Apparently, a concurrent civil action based on breach of contract by Mrs. Hawkes against the Browns is now before the courts, and at an earlier examination for discovery in that case much time was spent in cross-examining Mr. Brown on these issues. The matters before a civil court in determining the existence or breach of contract are quite different from the considerations before this enquiry. In my opinion, the substance of the issue before us does not turn on the welding tests but on the earlier conversations and to a lesser extent on what was said at the end of the test.

According to Mrs. Hawkes, after forty-five minutes or so working on the welding tests, Mr. Brown said to Mrs. Hawkes, "This isn't going to work out. This is no good...the job is too heavy for you." Mrs. Hawkes asked "What do you mean?" and he

replied, "We won't be taking you on. We're not hiring you."

Mr. Brown denies he said that, and states that what he said was, "I can't give you the job because your welding isn't good enough."

Both parties agree that, whatever the words used by Mr. Brown, at that point Mrs. Hawkes became very upset and raised her voice. Mr. Brown then sent her to see his wife in the office.

According to Mrs. Hawkes, Mrs. Brown then said, "The job is going to be too heavy for you" and added that she was "really sorry". She also said, "Wouldn't it be awful if you had a heart attack," and further suggested that Mrs. Hawkes go back to bookkeeping. Mrs. Brown confirmed that she said these things to Mrs. Hawkes. Her explanation was that she was trying to calm Mrs. Hawkes down and "ease the blow". In cross-examination, however, on several occasions Mrs. Brown admitted that she was worried that a woman like Mrs. Hawkes would find the work too hard and might die of a heart attack.

Prolonged questioning of Mrs. Brown both by myself in what may be described as examination-in-chief, and subsequently by Commission counsel in cross-examination, was directed toward discovering her views and feeling insofar as they motivated her statements to Mrs. Hawkes, both before and after the test. Although Mrs. Brown seemed to find it very difficult to give direct answers to questions, I believe this difficulty was due to confusion rather than evasion. In my opinion she lumped together several different motivations, but was unable to sort them out after the event.

I would summarize her feelings and beliefs thus: she had no personal dislike toward Mrs. Hawkes nor any special knowledge nor reason to believe that Mrs. Hawkes was not in good health. However, Mrs. Brown had a continuing concern about the work being heavy work, and, on the assumption that women are generally smaller in stature and have less physical strength than men, worried that a woman, especially a woman of Mrs. Hawkes' age, might not be able to do the work satisfactorily or do it without serious danger to her health. Nevertheless, in the beginning she was willing to try Mrs. Hawkes out in the job.

Mrs. Hawkes is about five feet, four inches tall and weighs about 170 pounds. She is in apparent good health and there is no indication she looked otherwise at the time she was interviewed by the Browns. And yet Mrs. Brown expressed great concern about Mrs. Hawkes health and ability to do the job. The only reasonable interpretation that can be placed on her concern as expressed in her own evidence, is that she was worried because of Mrs. Hawke's age and her lack of previous experience in manual labour. The latter concern may be a legitimate one, but Mrs. Brown never did inquire into Mrs. Hawkes state of health or whether she did any physically demanding tasks apart from her occupation. If she had so inquired she would have discovered, as Mrs. Hawkes had set out in her evidence, that she had done physically demanding work around her home outside Belleville. She had done such things as put up masonite exterior wall siding, use a chain saw to cut up logs, repair inside plumbing, roto-till a garden as well as lift and transport a roto-tiller. Mrs. Brown was concerned in a general way with the physical ability of Mrs. Hawkes to carry out the required

work, and a general concern of this nature may be legitimate. But Mrs. Brown believed that Mrs. Hawkes could not do the job, not because of any evidence of bad health or insufficient weight or stature, but because of Mrs. Hawkes' age and an unsupported assumption about her lack of experience with heavy physical work. In my opinion, therefore, Mrs. Hawkes' age was a material consideration in Mrs. Brown's conduct.

We may now review the conduct of both parties:

Mrs. Hawkes' story is clear and consistent. Believing she had a job to start September 13, 1976, she reported this to her Manpower counsellor; she arranged for extra practice in welding at Loyalist College; she invested $75 in equipment for the job; when she visited Brown's September 9, she did not bring her helmet in with her, as we might expect if she believed she were about to be tested. We also have corroboration in Mr. Collins' statement that on making a normal follow-up telephone call to Mrs. Brown he understood that Mrs. Hawkes was hired. In addition, Mrs. Hawkes' information that the employee whom she was to replace was being married on September 11, the Saturday before she was to begin work, was accurate. Such information hardly seems likely to be known by someone who was merely to come back for a test at some indefinite time in the future.

On the other hand, we do not have a coherent story from the Browns and what we do have is inconsistent. The Browns acquiesced in the fact that Mr. Collins sent them four applicants but gave no further explanation about the other three. We can only assume they were considered unsatisfactory without receiving a test. By common agreement they all had to have some training in welding,

and yet the Browns did not pursue any arrangements with three other applicants. We also know that they needed a welder by a specific date. Even so, Mrs. Brown claims she did not make any arrangements with Mrs. Hawkes about taking a test, or when she should return, if at all. These assertions in my view simply do not form a reasonable or plausible explanation of the way business people go about recruiting and hiring a new employee.

It makes more sense to accept Mrs. Hawkes' story that she had been hired, possibly in a flush of enthusiasm by Mrs. Brown to bring in a woman welder. (The Browns admit that Mrs. Brown had authority on her own to hire staff). After the initial decision Mrs. Brown had second thoughts, that changed into regret and finally ripened into resolve to refuse Mrs. Hawkes a job for the reasons already stated. Mrs. Hawkes' age was a material consideration in that decision. It was only after that decision had been given to Mrs. Hawkes, and in response to her great anxiety, that the Browns decided to give Mrs. Hawkes a welding test. I do not speculate on what might have been the result if the Browns had considered the test successful, but I do not think that they were then disposed to give Mrs. Hawkes the benefit of any doubt. The results might have been quite different had they permitted Mrs. Hawkes to start the job on the following Monday, and given her at least a few days of experience and training. In the end, Mrs. Hawkes never had that opportunity, and the test she received under the emotional conditions that prevailed was not an adequate substitute for a probationary period on the job.

It is interesting to note that on the following Monday or Tuesday (September 13 or 14), the Browns hired Miss Christie Jones as a welder. Miss JOnes was 22 years old, about two inches shorter and some fifty pounds lighter than Mrs. Hawkes. In explaining the hiring of Miss Jones, Mrs. Brown said she was "put onto a different job, a light job." This job was created for Miss Jones just four days after Mr. Brown had told Mrs. Hawkes that the original job had changed and was going to be heavier than originally intended. Counsel for the Commission asked Mrs. Brown the following incomplete question: "Isn't it fair to say that what was really bothering you about Heather Hawkes that wasn't bothering you about Christie Jones...? and Mrs. Brown replied, "It could have been her age."

I have concluded that the respondents did hire the complainant, and that a material reason for their subsequent refusal to employ her or commence her employment was her age. Even if there was a substantial misunderstanding between Mrs. Hawkes and the Browns about the firmness of the hiring, I accept Mrs. Hawkes' version of the conversation that took place when she first returned to the Browns' premises on September 9: before any suggestion of a test was made, Mrs. Brown told Mrs. Hawkes that the work would be too heavy for her. A material reason for this decision not to hire was Mrs. Hawkes' age, but it was not the sole reason. The respondents were also concerned about her physical ability, although perhaps a wrongheaded concern, nevertheless an honest one.

THE LAW

If Mrs. Hawkes' age were the sole or dominant reason for the

Browns' conduct there would be a violation of section 4(1)(b) of the Ontario Human Rights Code. On the other hand, it is not a violation of the Code to refuse to hire a job applicant because of a mistaken belief in the physical capacity of the applicant in question. What is the effect of a refusal to hire when the reasons are in part outside the Code and in part a violation of it?

A similar question has been considered by the Ontario courts in interpreting the Canada Labour Code, R.S.C. 1970, c. L-1, section 110(3), which states:"No employer...shall (a) refuse to employ or continue to employ any person...because the person is a member of a trade union..." In Regina v. Bushnell Communications Ltd. et al. (1973) 1 O.R. (2d) 442, an employer was charged with wrongfully dismissing an employee contrary to the section. It was argued on behalf of the employer that there were other reasons for the dismissal, and that the words of the statute must be interpreted to mean that the wrongful cause must be the sole or dominant cause for dismissal, not just one of the causes, to amount to an offence under the section 110(3). In rejecting this argument, Mr. Justice Hughes said at page 447, "If...membership in a trade union was present in the mind of the employer in his decision to dismiss, either as the main reason or incidental to it, or as one of many reasons regardless of priority, s.110(3) of the Canada Labour Code has been trangressed." It follows that if "age was present in the mind" of Mrs. Brown in her refusal to employ Mrs. Hawkes, there has been a violation of the Ontario Human Rights Code, section 4(1)(b), regardless of the fact that other reasons may also have been present.

The decision of Mr. Justice Hughes was affirmed on appeal,

reported at (1974) 4 O.R. (2d) 288, where the court said at page 290, "If it is found that union membership is a ground for the action taken [dismissal] then a conviction should be made," and it also added, "...union membership must be a proximate cause for dismissal, but it may be present with other proximate causes." These words apply aptly to the conduct of the respondents in this complaint.

The respondents did not raise the question of whether section 4(6) of the Code might offer a defence, but counsel for the Commission dealt briefly with the matter. Under section 4(6) there is an exemption from the application of section 4(1) where, "any discrimination...for a position or employment based on age... is a bona fide occupational qualification and requirement..." To make this provision applicable, it is necessary for a respondent to establish a job classification and description, supported by substantial grounds for a bona fide belief in the validity of the qualification. There is now a significant number of decisions on this matter, and it seems clearly established that the subsection may only be used to justify discrimination based on age when the respondent has satisfied the Board that there are sound reasons for the qualification. See, for example, the decision of Professor Bruce Dunlop in the case of Hall and Gray against the Borough of Etobicoke. (July, 1977). No evidence was presented to the Board giving a detailed description of the duties of a welder in the respondents' business operations. Indeed, the description of duties insofar as they related to heavy physical work, varied greatly from time to time in the evidence of the respondents.

Nor was any evidence presented to provide a sound basis for classifying men or woman over the age of fifty as being disqualified for the job. Accordingly, section 4(6) does not exempt the respondents from their duty not to discriminate against the complainant because of her age.

We must consider the nature and extent of the remedy to be given to Mrs. Hawkes in the circumstances. Mrs. Hawkes was unable to find another job until March 4, 1977, twenty-five weeks after she was to begin working for the Browns. Even then, the job was only a part-time job, amounting to between twenty-one and twenty-five hours a week, at an hourly wage of $2.65. Her earnings, in March 1977 were less than half the amount she would have earned at Brown's. There is great difficulty in predicting how long Mrs. Hawkes would have been employed by Brown's. Miss Jones, who had considerable experience welding in a muffler shop before going to Brown's, was let go after fourteen weeks. If this Board were to try to recompense Mrs. Hawkes for a maximum amount, on the assumption that she would have remained at Brown's indefinitely, the damages would be at least twenty-five weeks at about $160 per week, or some $4,000. In view of Mrs. Hawkes' lack of experience and limited training in a second career, the generally demanding nature of a welding job and the evidence of Mr. Brown concerning the poor quality of the welds, I think that such an amount would be excessive.

Another speculative aspect of the damages suffered by Mrs. Hawkes arises from the fact that her unemployment insurance benefits of about $90 per week had run out in 1974. If she had been employed by Brown's for at least eight weeks she would have

become eligible for a further fifty-two weeks of benefits. These benefits would, of course, have ceased on Mrs. Hawkes obtaining another job. If we should assume that Mrs. Hawkes would have worked a minimum of eight weeks at $160, and received unemployment insurance for a further seventeen weeks at $90, the total would be $2,810--a substantial sum of Money.

I have examined a number of awards in other violations of the Ontario Human Rights Code, and have come to the view that the primary purposes of awards do not appear to encompass giving full compensation by way of damages as in a civil suit for breach of contract or tort. Rather, they appear to be: to promote the purposes of the Code in encouraging respect for human rights in this Province; to provide sufficient liability for violations so that would-be violators of the Code will be discouraged from ignoring it; and to provide a measure of recompense that is considerably more than a token, and that compensates at least in part for monetary loss, and for the pain and suffering and loss of dignity inflicted upon an innocent complainant.

On this basis I order the respondents to pay Mrs. Hawkes the equivalent of wages during a reasonable on-the-job training and probationary period of four weeks at $160, that is, $640, and a further $75 in special damages for the items she purchased in anticipation of the job. In addition, I award Mrs. Hawkes a further $150 in general damages for the upset and pain caused by the events of September 9, 1976. The total amount of the award is $865. While it is a substantial sum for the respondents who carry on a relatively small business, it only compensates the complainant in part for the lost opportunity for considerably greater earnings.

Accordingly, the award should not be considered punitive; indeed it is held to the amount suggested through concern for the honest but mistaken belief of the respondents that they have not discriminated against the complainant but were acting in her best interests.

DATED at Kingston the 12th day of December, 1977.

D. A. SOBERMAN
Chairman, Board of Inquiry

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE R.S.O. 1970, CHAPTER 318, AS AMENDED

AND IN THE MATTER OF the complaint made by Mrs. Heather Hawkes of Marmora, Ontario, alleging discrimination in employment because of sex and age by Brown's Ornamental Iron Works of Belleville Limited, 99 College Street West, Belleville, Ontario.

O R D E R

This matter coming on for hearing on the 25th day of August, 1977, before this Board of Inquiry, pursuant to the Appointment of Bette Stephenson, Minister of Labour, dated the 9th day of May, 1977, in the presence of Counsel for the Human Rights Commission and Mrs. Heather Hawkes, the Complainant, Mrs. Vivienne Brown and Mr. Wesley Brown appearing for themselves and for Brown's Ornamental Iron Works of Belleville Limited, upon hearing evidence adduced by the parties and what was alleged by the parties, and upon finding that the complaint was substantiated:

1. It is ordered that the Respondents post the standard Human Rights card in the business office of their premises.
2. And it is ordered that the Respondents give notice of any job vacancy to the Human Rights Commission for one year following the date of this order. Notice should be given by mail within three days of a vacancy occurring and prior to listing the vacancy with the local Manpower office or advertising the vacancy in any way.

3. It is further ordered that the Respondents pay the sum of $865. by way of compensation to the Complainant.

Dated at Kingston the 12th day of December, 1977.

D. A. SOBERMAN

Chairman, Board of Inquiry